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**IN THE FEDERAL DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Irene Briseno, on her own behalf and as  
the personal representative of the estate  
of Damien Eryko Alvarado,

Plaintiff,

v.

City of Tucson; Nicolo Solarino (Tucson  
Police); Francisco Santa Maria (Tucson  
Police); Marco Durazo (Tucson Police);  
Sean Yeandle (Tucson Police); Henry  
Gamez (Tucson Police); Donavan Vance  
(Tucson Police); R. Ake (Tucson Police);  
Joseph Gradias (Tucson Police); Eric  
Evans (Tucson Police); Scott Ellis  
(Tucson Police); Raymond Flex (Tucson  
Fire); Silas Spencer (Tucson Fire); Keith  
Goldstein (Tucson Fire); and Justin  
Canovali (private citizen), all in their  
individual capacities,

Defendants.

Case No. \_\_\_\_\_

**COMPLAINT FOR DAMAGES**

**(Jury Trial Demanded)**

1. On May 25, 2020, George Floyd’s now-famous three words reverberated through  
every corner of the Globe: “I can’t breathe.” Two months earlier, those same three

1 words were uttered in Tucson by Damien Alvarado. For more than 15 minutes,  
2 Alvarado was held on the ground by Tucson police officers while he was clearly  
3 experiencing a medical emergency and verbalizing that he was in distress. Like  
4 George Floyd, much of the time that Alvarado spent restrained was face down on the  
5 ground. Like George Floyd, multiple officers stood by watching the scene unfold  
6 without so much as an utterance. Throughout the ordeal, Alvarado was punched,  
7 body-slammed, tased, handcuffed, kneeled upon, hogtied, hogtied again, and his head  
8 forced into a mesh hoodie. His suspected offense? A nonviolent misdemeanor. Also  
9 like George Floyd.  
10  
11

## 12 JURISDICTION AND VENUE

- 13  
14 2. This court has subject-matter jurisdiction under 42 U.S.C. §§ 1983, 1343, and 12132;  
15 28 U.S.C. § 1331; 29 U.S.C. § 794; the Fourth and Fourteenth Amendments to the  
16 U.S. Constitution.
- 17 3. Pursuant to 28 U.S.C. § 1367(a), this Court has supplemental jurisdiction over all  
18 state law claims because each state law claim arose out of the same set of facts and is  
19 so related to the federal law claims that it forms part of the same case or controversy.  
20
- 21 4. Venue is proper in the Tucson Division of the District of Arizona because all of the  
22 incidents and omissions giving rise to this suit occurred in Tucson.

## 23 PARTIES

### 24 Plaintiff

- 25  
26 5. Plaintiff Irene Briseno (hereafter “Briseno”) is a resident of Cochise County, Arizona.

- 1 6. Briseno is the biological mother of her deceased, unmarried, adult son, Damien Eryko  
2 Alvarado (hereafter “Alvarado”).  
3  
4 7. Briseno is the lawfully-designated personal representative of the estate of Damien  
5 Alvarado, having been appointed by the Pima County Superior Court on July 21,  
6 2021.  
7  
8 8. Pursuant to A.R.S. § 14-3110, Briseno has standing to bring the claims in this suit in  
9 her role as personal representative of the estate of the deceased.

10 Tucson Police Department Defendants

- 11 9. Defendant City of Tucson is a public entity established by the laws and Constitution  
12 of the State of Arizona. Through its council and mayor and city manager, Defendant  
13 City of Tucson operates, manages, directs, and controls the Tucson Police  
14 Department, which employs other defendants in this action.  
15  
16 10. Defendant Nicolo Solarino is currently employed as a police officer with the City of  
17 Tucson and was employed as a Tucson Police officer on March 22, 2020. He is sued  
18 in his individual capacity.  
19  
20 11. At all relevant times, Defendant Solarino acted under the color of state law.  
21  
22 12. Defendant Francisco Santa Maria was employed as a Tucson Police officer on March  
23 22, 2020. He is sued in his individual capacity.  
24  
25 13. At all relevant times, Defendant Santa Maria acted under the color of state law.  
26 14. Defendant Marco Durazo was employed as a Tucson Police officer on March 22,  
2020. He is sued in his individual capacity.

1 15. At all relevant times, Defendant Durazo acted under the color of state law.

2 16. Defendant Sean Yeandle was employed as a Tucson Police officer on March 22,  
3 2020. He is sued in his individual capacity.  
4

5 17. At all relevant times, Defendant Yeandle acted under the color of state law.

6 18. Defendant Henry Gamez was employed as a Tucson Police officer on March 22,  
7 2020. He is sued in his individual capacity.  
8

9 19. At all relevant times, Defendant Gamez acted under the color of state law.

10 20. Defendant Donovan Vance was employed as a Tucson Police officer on March 22,  
11 2020. He is sued in his individual capacity.  
12

13 21. At all relevant times, Defendant Vance acted under the color of state law.

14 22. Defendant R. Ake (first name unknown) was employed as a Tucson Police officer on  
15 March 22, 2020. He is sued in his individual capacity.  
16

17 23. At all relevant times, Defendant Ake acted under the color of state law.

18 24. Defendant Joseph Gradias was employed as a Tucson Police officer on March 22,  
19 2020. He is sued in his individual capacity.  
20

21 25. At all relevant times, Defendant Gradias acted under the color of state law.

22 26. Defendant Scott Ellis was employed as a Tucson police officer with the rank of  
23 Sergeant on March 22, 2020. He is sued in his individual capacity.  
24

25 27. At all relevant times, Defendant Ellis acted under the color of state law.

26 28. Defendant Eric Evans was employed as a Tucson police officer with the rank of  
Sergeant on March 22, 2020. He is sued in his individual capacity.

1 29. At all relevant times, Defendant Evans acted under the color of state law.

2 30. Defendants Solarino, Yeandle, Gamez, Durazo, Santa Maria, Vance, Ake, Gradias,  
3 Ellis, and Evans are referred to herein, collectively, as the “Individual Police  
4 Defendants.”  
5

6 31. Defendant Raymond Flex was employed as a paramedic with the Tucson Fire  
7 Department on March 22, 2020. He is sued in his individual capacity.

8 32. At all relevant times, Defendant Flex acted under the color of state law.

9  
10 33. Defendant Silas Spencer was employed as a Firefighter with the Tucson Fire  
11 Department on March 22, 2020. He is sued in his individual capacity.

12 34. At all relevant times, Defendant Spencer acted under the color of state law.

13 35. Defendant Keith Goldstein was employed as a paramedic with the Tucson Fire  
14 Department on March 22, 2020. He is sued in his individual capacity.  
15

16 36. At all relevant times, Defendant Goldstein acted under the color of state law.

17 37. Defendants Flex, Silas, and Goldstein are referred to herein, collectively, as the  
18 “Individual Fire Defendants.”  
19

## 20 21 **FACTUAL ALLEGATIONS**

### 22 Tucson Police Department History of In-Custody Deaths and Taser Deaths

23 38. During the ten years leading up to Alvarado’s death, there were at least three incidents  
24 in which a civilian was placed into restraints by Tucson police officers, subsequently  
25 suffered a heart attack while restrained, and later died while still in police custody.  
26

1 39. The first was Benjamin Sotelo. He was restrained in both handcuffs and leg restraints  
2 by Tucson police officers in August 2010, placed face down on a fire department  
3 gurney, and subsequently went into cardiac arrest. The Pima County Medical  
4 Examiner ruled the death a homicide. No one was criminally charged in connection  
5 with Benjamin's death.  
6

7 40. The second was Michael Carbone. In March 2012, Tucson police officers Tased  
8 Michael twice before handcuffing him. Paramedics with the Tucson Fire Department  
9 arrived on scene, placed him face down on the ground, and he stopped breathing. He  
10 is believed to have died of cardiac arrest.  
11

12 41. The third was Delbert Germany. Delbert was restrained in both handcuffs and leg  
13 restraints by Tucson police officers in September 2012, went into cardiac arrest  
14 shortly after, and died in the hospital several days later.  
15

16 42. In all three incidents, the deceased was behaving erratically when police arrived on  
17 scene. In at least two of those instances, Tucson police officers understood in the  
18 moment that they were dealing with an individual under the influence of cocaine or  
19 methamphetamine. For example, the day following Michael Carbone's in-custody  
20 death, but before the autopsy report was prepared, a police department spokesperson  
21 commented "that Mr. Carbone may have been under the influence of an unknown  
22 drug." Upon information and belief, in all three of the examples, the deceased had  
23 consumed a controlled substance hours prior to the police interaction.  
24  
25  
26

1 43. Prior to March 2020, the broader police community in the United States understood  
2 the classic, “tell-tale” signs of cocaine and methamphetamine consumption. It was  
3 well-understood, for example, that a person who exhibited “superhuman” strength  
4 was likely to have recently consumed cocaine, methamphetamine, or a synthetic  
5 substance designed to mimic the effects of those drugs. It was also well-understood  
6 that an individual high on cocaine or methamphetamine posed a heightened risk of  
7 sudden, unexpected heart failure upon being restrained lying down. Furthermore, it  
8 was understood that males statistically posed a greater risk of this phenomenon than  
9 females.  
10

11  
12 44. Upon information and belief, the command staff of the Tucson Police Department  
13 prior to March 22, 2020 were aware of the three in-custody deaths described above,  
14 and knew of the circumstances surrounding those in-custody deaths. This includes,  
15 but is not limited to, current Chief Chad Kasmar, then-Chief Chris Magnus, then-Staff  
16 Assistant Chief Mike Silva, and then-Assistant Chief Carla Johnson.  
17

18 45. Upon information and belief, the above-described command staff in March 2020  
19 understood that at least two of the earlier in-custody deaths involved the consumption  
20 of cocaine or methamphetamine.  
21

22 46. Additionally, during the years leading up to Alvarado’s death, there were at least three  
23 incidents in which Tucson police officers deployed a Taser device on a person who  
24 died shortly after.  
25  
26

1 47. The first was Gary A. Decker. He received a Taser shock to his chest in a Tucson  
2 motel room in April 2009, became unresponsive shortly after, and died after being  
3 transported to the hospital. The death was ruled a homicide by the medical examiner.  
4  
5 No one was charged in connection with his death.

6 48. The second was Tucson police officer Henry Fung. He volunteered to be Tased as  
7 part of a police training exercise in November 2011. He was Tased on a Monday,  
8 suddenly collapsed with no warning on that Tuesday, and died on that Wednesday in  
9 the hospital.  
10

11 49. The third was Michael Carbone, described above. In March 2012, Michael died after  
12 being Tased twice by Tucson police officers.  
13

14 50. Although Tasers are marketed as a non-lethal weapon, it has been linked to hundreds  
15 of in-custody police deaths since its widespread adoption by police agencies in the  
16 late 1990s. In 2006, for example, the Arizona Republic identified 167 individuals in  
17 the United States and Canada who died after being Tased by police. In 2012, Amnesty  
18 International reported that six individuals had died from the late 1990s through 2012  
19 after being Tased by officers with the Phoenix Police Department alone. In June 2018,  
20 Reuters news agency documented 1,081 in-custody police deaths nationwide in which  
21 a Taser was used.  
22

23 51. In addition to the more recent examples, Mark Anthony Romero died of cardiac arrest  
24 in 1998 or 1999 after Tucson police officers restrained both his hands and feet. Mr.  
25  
26



1 Romero was not Tased, but it is believed that Mr. Romero was suffering from either a  
2 mental health crisis or the effects of drugs at the time Tucson police restrained him.

3 Alvarado is Involved in a Traffic Accident  
4

5 52. At approximately 5:15pm on March 22, 2020, Alvarado drove his vehicle southbound  
6 on Campbell Avenue in Tucson. While driving through the intersection at Prince  
7 Road, Alvarado's vehicle collided with two other vehicles.

8 53. Alvarado exited his vehicle and, upon information and belief, immediately checked  
9 on the wellbeing of the occupants of the two other vehicles.  
10

11 54. Alvarado left the scene of the accident on foot, traveling eastbound along Prince  
12 Road.

13 55. Meanwhile, several eyewitnesses called 911 to report the accident.  
14

15 56. At the time of the collision, the other two vehicles contained only drivers. There were  
16 no passengers.

17 57. Neither of the other two drivers reported to first responders that they sustained  
18 physical injuries following the collision.  
19

20 58. Neither of the two drivers was transported to the hospital.

21 59. Neither of the two drivers asked to be transported to the hospital.

22 60. No bystanders were injured as a result of the collision.

23 61. Personnel from the Tucson Fire Department ("TFD") were the first emergency  
24 personnel to arrive to the scene of the collision.  
25  
26

1 62. Upon information and belief, personnel from TFD examined the two drivers who  
2 remained at the scene of the collision. Upon information and belief, the TFD  
3 personnel made independent determinations that the two drivers sustained no injuries.  
4  
5 63. Upon information and belief, Defendant Durazo was the first Tucson Police officer  
6 and Defendant Gamez was the second Tucson Police officer to arrive to the scene of  
7 the collision.  
8  
9 64. TFD personnel told Defendant Durazo that none of the vehicle occupants was injured.  
10  
11 65. In a separate conversation at the scene of the collision, TFD personnel told Defendant  
12 Gamez that none of the vehicle occupants was injured. Defendant Gamez repeated  
13 this information to his police colleagues, using his police radio.  
14  
15 66. Upon information and belief, Defendant Solarino heard this broadcast and was aware  
16 that none of the vehicle occupants was injured.  
17  
18 67. Under Arizona law, it is a misdemeanor offense to leave the scene of an accident in  
19 which there are no injuries. *See* A.R.S. §§ 28-662 & 28-663.  
20  
21 68. At the time, neither Defendant Gamez, nor Defendant Durazo, nor any other officers  
22 knew Alvarado's identity. At the time, officers knew only a general description of the  
23 fleeing driver and the general direction in which he fled.  
24  
25 69. At the time, Defendant Durazo did not know whether the driver who fled was the  
26 driver who caused the collision.  
70. At the time, Alvarado (identity yet unknown) was suspected only of the misdemeanor  
offense described above.

1 71. At the time, officers did not have probable cause to believe that Alvarado was in  
2 possession of a firearm.

3 72. At the time, officers did not have probable cause to believe that Alvarado was in  
4 possession of any other type of weapon.  
5

6 Initial Encounter Between Alvarado and Police

7 73. When the collision occurred, Defendant Justin Canovali and his adult son were at a  
8 nearby convenience store. They heard a loud noise. Defendant Justin Canovali  
9 observed Alvarado (identity yet unknown) leaving the scene of the accident.  
10

11 74. Defendant Canovali and his son deputized themselves to investigate the misdemeanor  
12 crime that they believed Alvarado to have committed. They took it upon themselves  
13 to canvass the surrounding area and question nearby civilians about Alvarado's  
14 whereabouts. They located Alvarado in a nearby alleyway near Prince Road.  
15

16 75. Defendant Canovali and his son found Alvarado lying on the ground in the alleyway  
17 and speaking in an illogical fashion. Defendant Canovali immediately recognized  
18 Alvarado's unusual behavior to be consistent with someone who is under the  
19 influence of drugs.  
20

21 76. Defendant Justin Canovali engaged in conversation with Alvarado. The conversation  
22 was calm and there were no heated words exchanged between the two men during the  
23 time that Alvarado was lying on the ground. Upon information and belief, Defendant  
24 Canovali's brief conversation with Alvarado reinforced his belief that Alvarado was  
25 under the influence of drugs.  
26

1 77. Upon information and belief, Defendant Canovali had never received professional  
2 training on how to detect when someone may be high on drugs.

3 78. Upon information and belief, Defendant Canovali did not obtain Alvarado's identity  
4 during his conversations with Alvarado. At this time, Alvarado's identity remained a  
5 mystery to Defendant Canovali and to officers.  
6

7 79. Defendant Canovali did not see a weapon on Alvarado's person, and Alvarado did not  
8 indicate to Defendant Canovali that he was armed.  
9

10 80. During Defendant Canovali's conversations with Alvarado, Canovali never felt  
11 personally threatened by Alvarado.

12 81. At approximately 5:40pm (roughly 25 minutes after the car collision), Defendant  
13 Solarino entered the alleyway in his marked police vehicle.  
14

15 82. Upon seeing the approaching police vehicle, Alvarado stood up and ran toward a  
16 nearby block wall. Alvarado began to scale the block wall, with the apparent intention  
17 of escaping.

18 83. Upon information and belief, Defendant Justin Canovali immediately recognized that  
19 Alvarado was poised to escape over the block wall and recognized that Defendant  
20 Solarino would not reach the block wall quickly enough to prevent Alvarado's escape  
21 to the other side.  
22

23 84. Alvarado was atop the block wall and about to drop down to the other side of the wall  
24 when Defendant Solarino exited his police vehicle and began running toward the wall.  
25 Before Solarino arrived to the wall, Defendant Canovali grabbed Alvarado's leg.  
26

1 85. Defendant Solarino reached the wall, grabbed onto Alvarado. At this point, both  
2 Canovali and Solarino were grabbing onto Alvarado's legs with the intention of  
3 pulling him off the wall.  
4

5 86. Defendant Solarino did not instruct Defendant Justin Canovali to step back from the  
6 scene. Instead, Solarino coordinated with Defendant Canovali, who was an unknown  
7 civilian at this time. Solarino gave instruction to Defendant Canovali on how best to  
8 achieve their joint objective of pulling Alvarado down from the wall. Defendant  
9 Canovali did his best to follow Defendant Solarino's instructions.  
10

11 87. Defendant Solarino and Defendant Canovali succeeded in pulling Alvarado down  
12 from the wall. The struggle continued in the dirt of the alleyway.  
13

14 88. Upon information and belief, Defendant Solarino at this point recognized that  
15 Alvarado was under the influence of cocaine or methamphetamine.  
16

17 89. In an attempt to subdue Alvarado, Defendant Solarino punched Alvarado three times  
18 with a closed fist.  
19

20 90. Alvarado never punched or kicked Defendants Solarino or Canovali.  
21

22 91. Defendant Canovali continued collaborating with Defendant Solarino, now with the  
23 shared objective of subduing Alvarado on the ground.  
24

25 92. At this time, Defendant Solarino removed a Taser device from his duty belt.  
26

Defendant Solarino momentarily took his hands off of Alvarado while he prepared his  
Taser device.

1 93. While Defendant Solarino readied his Taser device, Defendant Canovali threw  
2 Alvarado to the ground.

3 94. Upon information and belief, Defendant Solarino did not warn Alvarado of his  
4 intention to deploy the Taser device.  
5

6 95. Defendant Solarino discharged his Taser device. This caused a small, nitrogen  
7 cartridge within the Taser device to propel two wires tipped with electrodes (also  
8 called probes) into Alvarado's body.  
9

10 96. Upon information and belief, the two probes landed in Alvarado's bare skin, in a  
11 portion of his body where there was no clothing.

12 97. Defendant Solarino sent an electric charge into Alvarado's body twice in quick  
13 succession: each electric discharge was five seconds in duration.  
14

15 98. For much or all of those ten seconds, Alvarado was on the ground.

16 99. The Taser device used by Defendant Solarino delivers 19 electric pulses per second  
17 on average. During the ten seconds that Alvarado was shocked by the Taser, his body  
18 received approximately 190 pulses of electricity.  
19

20 100. By this time, it was clear to Defendant Solarino that Alvarado did not have a  
21 weapon on his person.

22 Alvarado is Pinned to the Ground and Suffocated

23 101. Defendant Yeandle was the second Tucson police officer to arrive to the alley  
24 where the struggle was underway.  
25  
26

1 102. Less than a minute after Yeandle's arrival to the alley, Defendant Gamez –  
2 who moments earlier had been at the scene of the collision – arrived to the alley.

3 103. Upon information and belief, at this time, Defendant R. Ake also arrived to the  
4 alley.  
5

6 104. Approximately 1 min. and 30 seconds after Defendant Solarino deployed his  
7 Taser, Defendants Solarino, Yeandle, Ake, and Gamez succeeded in placing Alvarado  
8 on his stomach and handcuffing him behind his back.  
9

10 105. Upon information and belief, Defendants Solarino, Yeandle, Ake, and Gamez  
11 recognized that Alvarado exhibited an unusual degree of strength for someone of  
12 Alvarado's size, indicating that Alvarado was under the influence of either cocaine or  
13 methamphetamine.  
14

15 106. With Alvarado still on his stomach, Defendant Yeandle put his body weight on  
16 Alvarado in the process of handcuffing him and in the moments after handcuffing  
17 him.  
18

19 107. Upon information and belief, Defendant Ake firmly placed his elbow on the  
20 back of Alvarado's neck while Alvarado was being handcuffed. Then Defendant Ake  
21 shifted and placed his right knee on Alvarado's neck.

22 108. Ake kept his knee on Alvarado's neck for approximately one minute.

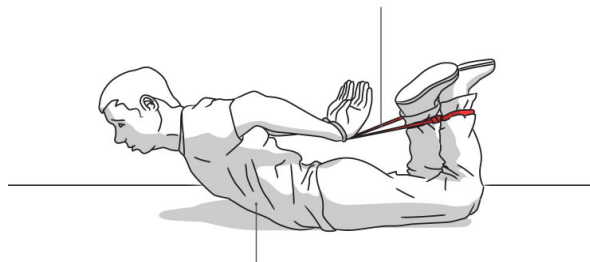
23 109. Upon information and belief, Defendant Yeandle encouraged Ake to place his  
24 knee on Alvarado's neck.  
25  
26

- 1 110. At this time, Defendant Gradias became the fifth Tucson police officer to  
2 arrive to the alley. The other four Defendant officers continued holding Alvarado face  
3 down on the ground.  
4
- 5 111. Through this process, Alvarado made noises indicating that he was in medical  
6 distress.  
7
- 8 112. Approximately 2 minutes and 30 seconds after officers placed Alvarado onto  
9 his stomach, Alvarado exclaimed: "I can't breathe."  
10
- 11 113. Defendants Solarino, Yeandle, Gamez, Ake, and Gradias heard Alvarado make  
12 this statement.  
13
- 14 114. One of the Defendant officers responded: "Yes, you can. You're talking."  
15
- 16 115. Defendants Solarino, Yeandle, Gamez, Ake, and Gradias did not adjust their  
17 physical restraint methods following the "I can't breathe" comment.  
18
- 19 116. Approximately 30 seconds after Alvarado warned that he can't breathe,  
20 Defendant Gamez expressed concern for Alvarado's wellbeing. He said:  
21 "[Alvarado's] been in this downward position for a while. He's probably high, so we  
22 gotta get him on his side as soon as we can."  
23
- 24 117. Defendants Solarino, Yeandle, Ake, and Gradias were present when Defendant  
25 Gamez expressed this concern.  
26
118. Rather than immediately placing Alvarado on his side, however, Defendants  
Gamez, Gradias, Yeandle, and Ake continued pinning Alvarado in his existing



1 position (face down) for an additional 60 seconds. During this time, Defendant  
2 officers further immobilized an already-handcuffed Alvarado with a TARP restraint.

3 119. A TARP restraint, also known as a “total appendage restraint procedure,” is the  
4 simultaneous securing of a person’s arms and legs. The arms are restrained with  
5 handcuffs while the legs are restrained at the ankle using a hobble or “ripp” restraint  
6 device. The legs are then clipped to the handcuffs. The person’s legs bend backward,  
7 creating what is commonly thought of as a hogtie. The diagram below shows the  
8 typical result:  
9  
10



11  
12  
13  
14  
15  
16  
17 120. Approximately one minute after Defendant Gamez expressed concern and  
18 approximately one minute and 30 seconds after Alvarado warned that he couldn't  
19 breathe, officers lifted Alvarado off of his stomach and placed him on his side.  
20

21 121. Approximately 2 minutes and 30 seconds after Defendant Gamez expressed  
22 concern and approximately 3 minutes after Alvarado alerted officers that he couldn't  
23 breathe, Alvarado again exclaimed that he couldn't breathe.  
24  
25  
26

1 122. Upon information and belief, Defendant Yeandle responded: “you can breathe  
2 just fine.” Upon information and belief, Defendant Solarino responded: “if you can  
3 complain, you can breathe.”  
4

5 123. Mere seconds after Alvarado warned officers for the second time that he  
6 couldn’t breathe, Defendant Solarino ordered that a second TARP restraint be placed  
7 on Alvarado.  
8

9 124. Defendant Yeandle agreed with Defendant Solarino that a second TARP was  
10 necessary.  
11

12 125. Despite Alvarado already being handcuffed and hogtied with the first TARP,  
13 and despite clear signs that Alvarado was in distress, no Defendant officers in this  
14 moment expressed concern for the plan to hogtie Alvarado a second time. The only  
15 officer who had ever expressed concern (Defendant Gamez) remained silent as his  
16 colleagues applied the second TARP restraint.  
17

18 126. Upon information and belief, personnel from TFD were on scene by this time  
19 and were prepared to assess Alvarado, but the Individual Police Defendants refused  
20 them access to the patient.  
21

22 127. As Defendants Yeandle and Solarino began to apply the second TARP  
23 restraint, Alvarado said again: “I can’t breathe.” It was the third time that Defendants  
24 Yeandle, Solarino, Ake, and Gradias heard Alvarado use those words. Upon  
25 information and belief, it was also the third time that Defendant Gamez heard  
26 Alvarado use those words.

1 128. Defendant Yeandle responded this time as he had responded earlier: “you can  
2 breathe just fine.” Defendant Solarino responded: “Stop complaining, stop talking,  
3 just start breathing.”  
4

5 129. As Defendants Yeandle and Solarino continued to apply the second TARP  
6 restraint, Defendant Gradias stood approximately five feet away, casually staring into  
7 the screen of his cell phone.  
8

9 130. Upon information and belief, Defendants Santa Maria, Durazo, and Ellis had  
10 arrived on scene by this time and overheard Alvarado’s third declaration that he can’t  
11 breathe.  
12

13 131. When Alvarado stated for the third time that he can’t breathe, Defendant Ellis  
14 was the highest-ranking officer on scene.  
15

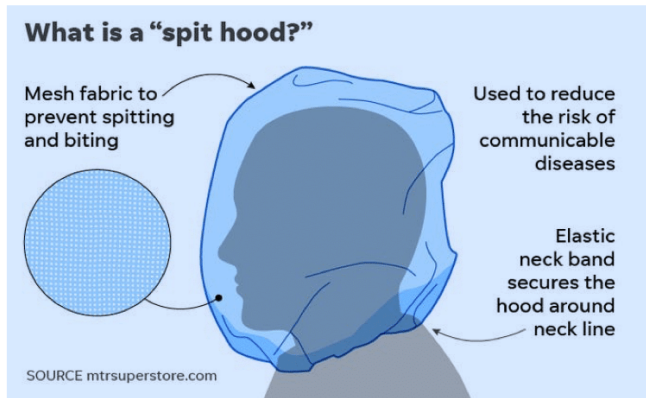
16 132. Meanwhile, in the process of applying the second TARP restraint, Defendants  
17 Yeandle and Solarino forced Alvarado back onto his stomach. Approximately three  
18 minutes after Alvarado was first placed on his side in response to Defendant Gamez’s  
19 expressed concern, officers yet again forced Alvarado into the facedown position.  
20

21 133. This time, neither Defendant Gamez nor any other officers expressed concern.  
22

23 134. Alvarado continued making noises of distress and, by this time, Alvarado was  
24 not resisting officers in any way.  
25

26 135. Immediately after Defendants Yeandle and Solarino concluded placing the  
second TARP restraint on Alvarado, Defendant Ellis instructed the officers to place  
yet another restrictive device on Alvarado: a spit sock.

136. A spit sock, also sometimes called a spit hood, is a mesh cloth that is placed over the entirety of a person's head. It is designed to prevent the subject from biting or spitting at officers. It has been linked to several instances of asphyxiation.



*image courtesy of USA TODAY*

137. Following Defendant Ellis' instruction, one of the Defendant officers placed the spit sock over Alvarado's head. This was after Alvarado told officers three times that he couldn't breathe.

138. By this time, there were two sergeants on scene. In addition to Sergeant Ellis, Sergeant Evans was nearby. Sergeant Evans stood observing less than 20 feet away. Defendant Evans never expressed concern with the manner in which Alvarado was restrained.

#### Alvarado Dies

139. Shortly after the spit sock was placed on Alvarado, personnel from the Tucson Fire Department were permitted access to Alvarado by the Individual Police Defendants.

1 140. The spit sock remained on Alvarado's head, preventing TFD personnel from  
2 being able to see Alvarado's eyes or facial expressions when evaluating his medical  
3 condition.  
4

5 141. Defendants Durazo and Vance kneeled down next to Alvarado during the  
6 entire medical evaluation by TFD personnel.

7 142. Defendants Flex, Silas, and Goldstein undertook the medical evaluation of  
8 Alvarado. During this time, Alvarado continued making noises indicating that he was  
9 in medical distress.  
10

11 143. Upon information and belief, Defendants Flex, Silas, or Goldstein made the  
12 decision to place a second spit sock over the first spit sock. Now, Alvarado was  
13 subjected to two TARP restraints and two layers of spit sock meshing over his head  
14 and face.  
15

16 144. Following approximately eight minutes of medical evaluation, Defendants  
17 Flex, Silas, and Goldstein concluded that Alvarado was medically stable and did not  
18 need to be transported to the hospital.  
19

20 145. Almost immediately after Defendants Flex, Silas, and Goldstein packed up  
21 their medical equipment and stepped away, Alvarado stopped moving and stopped  
22 making noises.  
23

24 146. Although Defendants Flex, Silas, and Goldstein had concluded evaluating  
25 Alvarado, they did not go far. For approximately five minutes after concluding their  
26 medical evaluation of Alvarado, Defendants Flex, Silas, and Goldstein remained

1 within 50 feet of Alvarado. They were casually chatting with their police officer  
2 colleagues about unrelated matters.

3  
4 147. For approximately five minutes after Defendants Flex, Silas, and Goldstein  
5 concluded their evaluation of Alvarado, Defendants Vance and Durazo continued  
6 leaning over a motionless Alvarado. During those five minutes, neither Vance nor  
7 Durazo expressed concern that a previously vivacious Alvarado was no longer  
8 moving or making noises.

9  
10 148. During those approximately five minutes, Defendants Vance and Durazo were  
11 within view of Defendants Flex, Silas, and Goldstein who were casually chatting with  
12 other police officers. During those five minutes, Defendants Vance and Durazo did  
13 not alert the nearby paramedics that Alvarado had stopped moving.

14  
15 149. Neither Defendant Durazo nor Defendant Vance was checking for a pulse on  
16 Alvarado during those five minutes.

17  
18 150. Neither Defendant Durazo nor Defendant Vance was paying attention to  
19 Alvarado's breathing or chest movements during those five minutes.

20  
21 151. During the same five minutes, Defendants Evans and Santa Maria stood within  
22 ten feet of the motionless Alvarado. For much of these five minutes, Defendants  
23 Evans and Santa Maria engaged in casual conversation with one another about  
24 unrelated matters.

25  
26

1 152. During these five minutes, Defendant Evans – as the highest-ranking officer in  
2 the immediate vicinity – gave no instructions and expressed no concerns regarding the  
3 motionless Alvarado.  
4

5 153. During these five minutes, the other sergeant (Defendant Ellis) was only a few  
6 yards away from the motionless Alvarado.

7 154. During these five minutes, Defendants Ake, Gamez, Gradias, Solarino, and  
8 Yeandle also remained nearby. They were casually talking amongst themselves about  
9 unrelated matters, sometimes smiling and joking.  
10

11 155. Eventually, it occurred to Defendant Santa Maria that he hadn't seen any  
12 movement or heard any noises coming from Alvarado in quite some time. Defendant  
13 Santa Maria posed the question to his colleagues: "is he still breathing?" Neither  
14 Defendant Durazo nor Defendant Vance raised the concern, despite their crouching  
15 next to the passive Alvarado.  
16

17 156. Alvarado was dead. He had no pulse, and in fact was not breathing. Alvarado  
18 had been asphyxiated.  
19

20 157. Alvarado was transported to Banner UMC and pronounced dead shortly after  
21 Defendant Santa Maria's inquiry.  
22  
23  
24  
25  
26

**COUNT I**  
**42 U.S.C. § 1983 – Fourth Amendment**  
**Unreasonable Seizure (Excessive Force)**  
**Against Solarino, Ake, Gamez, Gradias, Yeandle, and Ellis**

158. The allegations above are incorporated by reference in this Count.

159. Defendant Solarino first seized Alvarado by pulling him off the wall, Tasing him, punching him, and forcing him onto the ground. This alone is excessive force, as Alvarado was an unarmed individual suspected only of a nonviolent misdemeanor offense. A Taser used in the dart mode is (and was at that time) widely accepted to be a lethal use of force when the recipient of the electric charge is high on methamphetamine or cocaine. Upon information and belief, when Defendant Solarino deployed his Taser he already suspected that Alvarado was high, due to Alvarado's behavior and his "superhuman" strength.

160. Defendant Yeandle and possibly Defendants Solarino and Gamez placed their body weight on top of a prone Alvarado at various points in time as they were placing handcuffs on Alvarado. Again, these Defendants had probable cause to believe only that Alvarado committed a nonviolent misdemeanor offense and they knew him to be unarmed.

161. Defendant Ake (with Defendant Yeandle's encouragement) kneeled on Alvarado's neck while the others placed handcuffs on Alvarado. This constitutes excessive force under the circumstances, for the same reasons explained above.



1 162. Defendants Ake, Solarino, Gamez, Yeandle, and Gradias placed the TARP  
2 restraint on Alvarado. This constitutes excessive force under the circumstances, for  
3 the same reasons explained above.  
4

5 163. Defendant Ellis instructed his subordinates to place a spit sock on Alvarado.  
6 This constitutes excessive force under the circumstances. In particular, Alvarado was  
7 no longer resisting and did not spit on officers during the approximately 15 minutes  
8 leading up to this order.  
9

10 164. Both the second TARP restraint and the spit sock were forms of force that were  
11 imposed at a point in time when Alvarado was not resisting, when Alvarado was  
12 verbalizing his pain, and when Alvarado was articulating that he was experiencing a  
13 medical emergency. The Defendants named in this Count ignored Alvarado's  
14 complaints.  
15

16 165. The actions of the Defendants named in this Count were intentional, malicious,  
17 willful, wanton, and/or callously indifferent for Alvarado's constitutionally protected  
18 rights, thereby entitling Plaintiff to an award of punitive damages.  
19

20 166. Under this Count, Plaintiff is entitled to:

- 21 a. compensatory damages;
- 22 b. damages for loss of life (also sometimes called hedonic damages);
- 23 c. damages for pain and suffering of the decedent prior to death; and
- 24 d. punitive damages
- 25
- 26

**COUNT II**  
**42 U.S.C. § 1983 – Conspiracy**  
**Violation of Fourth Amendment (Excessive Force)**  
**Against Solarino and Canovali**

167. The allegations above are incorporated by reference in this Count.

168. At all relevant times, Defendant Solarino acted under the color of state law, as he was wearing a Tucson police uniform, carried a firearm and Taser issued by the Tucson Police Department, and drove a clearly-marked police vehicle owned by the City of Tucson.

169. At all relevant times, Defendant Canovali was a private citizen.

170. Defendants Solarino and Canovali conspired to deprive Alvarado of his constitutional rights, namely, his Fourth Amendment right to be free of excessive force.

171. Despite knowing that Alvarado was suspected only of a misdemeanor offense and despite lacking any evidence indicating he posed a risk of harm to officers or civilians, Canovali and Solarino conspired to cause Alvarado to be subjected to a physical assault that was clearly excessive under the circumstances.

172. Defendants Canovali and Solarino acted in concert and communicated with one another.

173. Defendants Canovali and Solarino were in agreement that their shared objective was to bring Alvarado off of the block wall, and to seize him.

1 174. Defendants Canovali and Solarino each committed an overt act in furtherance  
2 of that shared objective, by each grabbing onto Alvarado.

3 175. Neither Canovali nor Solarino suspected Alvarado of having a weapon or of  
4 committing any offense other than one non-violent misdemeanor offense described  
5 above.  
6

7 176. By exerting the level of force they did in effectuating the arrest, they each  
8 used force that was excessive under the standards of the Fourth Amendment – and  
9 they conspired together to achieve that.  
10

11 177. Alvarado immediately called out in distress after being taken to the ground by  
12 Defendants Canovali and Solarino.

13 178. Within four minutes of being taken to the ground by Defendants Canovali and  
14 Solarino, Alvarado was calling out: “I can’t breathe.” Within 20 minutes of being  
15 taken to the ground, Alvarado was dead. This brief conspiracy was a proximate cause  
16 of Alvarado’s death and of the approximately 20 minutes of pain and suffering he  
17 endured.  
18

19 179. Under this Count, Plaintiff is entitled to compensatory damages and damages  
20 for pain and suffering.  
21  
22  
23  
24  
25  
26

1 **COUNT III**  
2 **42 U.S.C. § 1983 – *Monell***  
3 **Unconstitutional Policy/Custom in Violation of the Fourth & Fourteenth Amendment**  
4 **Against City of Tucson**

5 180. The allegations above are incorporated by reference in this Count.

6 181. At all relevant times, the City of Tucson, through the Tucson Police  
7 Department, maintained a written policy and/or unwritten custom permitting the use  
8 of six distinct procedures that, combined, proximately caused Alvarado's death and  
9 were the moving force in violating his constitutional rights:

- 10 a. The permitted use of spit socks;  
11 b. The permitted use of TARP restraints;  
12 c. The permitted use of a Taser on suspects who are believed to be suffering from  
13 cocaine and/or methamphetamine intoxication;  
14 d. The practice/custom of allowing an officer to put body weight on suspects who  
15 are believed to be suffering from cocaine and/or methamphetamine  
16 intoxication;  
17 e. The practice/custom of kneeling on a suspect's neck;  
18 f. The practice/custom of denying or delaying treatment by EMTs and  
19 paramedics when a suspect is visibly in medical distress, is safely restrained in  
20 handcuffs, and has the presence of multiple police officers to aid in subduing  
21 the suspect for immediate medical evaluation.  
22  
23  
24  
25  
26

1 182. At all relevant times, command staff within the Tucson Police Department  
2 knew of the heightened risks of the use of Tasers, spit socks, and TARP restraints on  
3 individuals, like Alvarado, who presented with signs of acute methamphetamine  
4 and/or cocaine use.  
5

6 183. Upon information and belief, in March 2020 the City of Tucson maintained a  
7 policy allowing its officers to use TARP restraints. The policy did not limit or restrict  
8 the use of TARP restraints in situations where the detainee is in medical distress or  
9 experiencing cocaine/methamphetamine intoxication.  
10

11 184. A written policy allowing the use of TARP devices on individuals visibly  
12 experiencing a mental health crisis or intoxication from cocaine or methamphetamine  
13 is unconstitutional, as such a policy:  
14

- 15 a. presents a substantial risk of serious harm to the detained individuals;
- 16 b. amounts to deliberate indifference to a serious medical need; and
- 17 c. leads to a Fourth Amendment excessive force violation.

18 185. As of March 2020, command staff within the Tucson Police Department were  
19 aware that the use of TARP restraints were linked to in-custody deaths throughout the  
20 United States. Command staff were aware of at least two such in-custody deaths in  
21 their own department.  
22

23 186. A written policy allowing the use of Taser devices on individuals visibly  
24 experiencing a mental health crisis or intoxication from cocaine or methamphetamine  
25 is unconstitutional, as such a policy:  
26

- a. presents a substantial risk of serious harm to the detained individuals;
- b. amounts to deliberate indifference to a serious medical need; and
- c. leads to a Fourth Amendment excessive force violation.

187. A written policy allowing the use of a spit sock on individuals visibly experiencing a mental health crisis or intoxication from cocaine or methamphetamine is unconstitutional, as such a policy:

- a. presents a substantial risk of serious harm to the detained individuals;
- b. amounts to deliberate indifference to a serious medical need;
- c. leads to a Fourth Amendment excessive force violation.

188. The maintenance of the above written policies and unwritten customs were the moving forces behind the constitutional violation suffered by Alvarado in March 2020. Individual Defendants followed the policies and customs described above.

189. Because this is a claim against the municipality, Defendant is not entitled to the defense of qualified immunity as to this Count.

190. Under this Count, Plaintiff is entitled to:

- a. compensatory damages;
- b. damages for loss of life (also sometimes called hedonic damages); and
- c. damages for pain and suffering of the decedent prior to death

**COUNT IV**  
**42 U.S.C. § 1983 – *Monell & City of Canton***  
**Failure to Train**  
**Against City of Tucson**

191. The allegations above are incorporated by reference in this Count.

192. As described above, the command staff of the Tucson Police Department were subjectively aware in March 2020 that there existed a risk of death among detainees who are Tased, forcibly held on the ground, restrained by all four limbs, and forced into a spit sock.

193. Additionally, the command staff of the Tucson Police Department were subjectively aware in March 2020 that this risk of death was increased further when a detainee visibly shows signs of cocaine or methamphetamine intoxication. Command staff understood that even one of the above elements, alone, poses a substantial risk of serious harm.

194. Upon information and belief, the Tucson Police Department consisted of approximately 800 sworn officers in March 2020. Upon information and belief, the Tucson Police Department had trained fewer than 10 percent of those officers about special considerations when detaining an individual visibly showing the signs of cocaine or methamphetamine intoxication.

195. Upon information and belief, the small number of officers who had received this training by March 2020 were taught merely that officers should avoid placing such detainees in a facedown (prone) position. Upon information and belief, the

1 training did not address the risks of spit socks, TARP restraints, and Taser  
2 deployments on such detainees. Additionally, the training suggested that the risk – if  
3 any – could be avoided merely by placing the detainee in a “recovery” position (ie,  
4 continuing to pin down the detainee, but no longer facedown).  
5

6 196. Upon information and belief, the training did not teach officers to pay attention  
7 and *believe* the statements made by detainees visibly experiencing the effects of  
8 cocaine and methamphetamine intoxication. For example, sounds of anguish and  
9 when a detainee clearly states: “I can’t breathe.”  
10

11 197. During the ten years leading up to Alvarado’s death, the need for adequate  
12 training related to the detention of methamphetamine and cocaine intoxicated  
13 individuals should have been evident.  
14

15 198. For example, between 2011 and 2018, deaths among males involving  
16 methamphetamines rose from 1.8 to 10.1 per 100,000 population. This represents a  
17 more than five-fold increase in seven years.  
18

19 199. Surging methamphetamine usage was not new as of March 2020.  
20

21 200. Given this widespread usage, the Tucson Police Department’s failure to train  
22 all of its approximately 800 officers amounted to an inadequate training of its police  
23 force.  
24

25 201. The frequency with which Tucson officers, prior to March 2020, attempted to  
26 arrest individuals displaying signs of methamphetamine and cocaine intoxication



1           should have indicated to command staff a certain predictability that any given officer  
2           lacking the specific tools to handle the situation will violate citizens' rights.

3           202.       The City's failure to train amounted to a deliberate indifference to a highly  
4           predictable scenario of officers violating citizens' constitutional rights.

5           203.       The training that *was* given to the small number of Tucson police officers as of  
6           March 2020 was inadequate, as it taught trainees only that the "recovery" position  
7           was enough to avoid serious health consequences in detainees.

8           204.       The inadequate training can fairly be said to represent city policy. In short, it  
9           amounted to a policy of not taking reasonable steps to train its employees regarding  
10          matters that are so obviously likely to result in constitutional violations of a not  
11          insubstantial subset of the public with which police come into contact on a daily basis.

12          205.       The failure to provide mandatory training and the very limited (and inaccurate)  
13          training offered to the small number of Tucson officers was the moving force behind  
14          the constitutional violation suffered by Alvarado in March 2020.

15          206.       The deficiency in the training was closely related to the type of constitutional  
16          harm suffered by Alvarado. Put differently, the deficient training caused the  
17          individual Defendants in March 2020 to be deliberately indifferent to the substantial  
18          risk of serious harm to Alvarado and to his serious medical needs.

19          207.       This training deficiency was a deliberate choice by command staff to follow a  
20          course of action.

**COUNT V**  
**42 U.S.C. § 12132 (ADA) and 29 U.S.C. § 794 (Section 504)**  
**Discrimination on the Basis of Disability**  
**Against City of Tucson**

208. The allegations above are incorporated by reference in this Count.

209. Defendant City of Tucson is a public entity, per 42 U.S.C. § 12131.

210. During all relevant times, Defendant City of Tucson received federal financial assistance per 29 U.S.C. § 794.

211. Both the ADA and Section 504 of the Rehabilitation Act were enacted as remedial statutes, with the goal of promoting the rights of disabled individuals and providing compensation when they experience discrimination.

212. Both the ADA and Section 504 of the Rehabilitation Act are silent with regard to survivorship of claims seeking compensatory damages for disability discrimination.

213. Consequently, federal common law provides the rules pertaining to the survivorship of claims brought under the ADA and Section 504 of the Rehabilitation Act for harm suffered by someone who is now deceased. Under the federal common law, federal claims typically survive a decedent's death if they are remedial in nature and not penal. Plaintiff does not seek punitive damages as to this Count.

214. Claims for non-economic compensatory damages in the form of pain and suffering, emotional distress, and similar such claims are not punitive in nature and therefore survive the decedent's death.

1 215. Alvarado had physical and mental impairments that substantially limited his  
2 major life activities. For example, prior to his death, Alvarado had periodically sought  
3 out the treatment of medical professionals for his addictions. Prior to his death, there  
4 was a record of his impairment; namely, of his addiction to controlled substances.  
5 Additionally, Alvarado was regarded as having such an impairment because he was  
6 subjected to discrimination because of an actual or perceived physical or mental  
7 impairment. Accordingly, at the time of his death, Alvarado was an individual with a  
8 disability as defined by the ADA. 42 U.S.C. § 12102.  
9  
10

11 216. Title II of the ADA applies to municipalities and protects qualified individuals  
12 with disabilities from discrimination on the basis of disability in services, programs  
13 and activities provided by municipalities. 42 U.S.C. §§ 12131-12132.  
14

15 217. Such services, programs, and activities include police protection and police  
16 services.  
17

18 218. At all times relevant herein, Alvarado was a qualified individual with a  
19 disability.  
20

21 219. The City of Tucson's police services must comply with Title II of the ADA  
22 and relevant provisions of the Rehabilitation Act, just as do other municipally-  
23 operated programs.  
24

25 220. Title II of the ADA provides that "no qualified individual with a disability  
26 shall, by reason of such disability, be excluded from participation in or be denied the

1 benefits of the services, programs, or activities of a public entity, or be subjected to  
2 discrimination by any such entity.” 42 U.S.C. § 12132.

3  
4 221. Pursuant to Title II of the ADA and its implementing regulations, public  
5 entities are required to “make reasonable modifications in policies, practices, or  
6 procedures when the modifications are necessary to avoid discrimination on the basis  
7 of disability, unless the public entity can demonstrate that making the modifications  
8 would fundamentally alter the nature of the service, program, or activity.” 28 C.F.R. §  
9 35.130(b)(7)(i).

10  
11 222. Section 504 states that “[n]o otherwise qualified individual with a disability in  
12 the United States ... shall, solely by reason of his or her disability, be excluded from  
13 the participation in, be denied the benefits of, or be subjected to discrimination under  
14 any program or activity receiving Federal financial assistance. 29 U.S.C. § 794(a); 11  
15 C.F.R. § 9420.3.

16  
17 223. Defendant City of Tucson is covered within the meaning of Section 504  
18 because it is a municipal government that provides services, programs, and activities  
19 and receives federal financial assistance. 29 U.S.C. § 794.

20  
21 224. Defendant City of Tucson is required by Section 504 to provide arrestees and  
22 detainees who suffer from disabilities with equal access to policing.

23  
24 225. In March 2020, Defendant City of Tucson discriminated against Alvarado on  
25 the basis of his disabilities by forcibly holding him down for more than 15 minutes  
26

1 when it was clear that he was experiencing a mental health emergency and posed no  
2 harm to officers or to the public.

3 226. Tucson officers did not request assistance from specially-trained mental health  
4 professionals, although they had the time and resources to do so.

5 227. Defendant City of Tucson therefore discriminated against Plaintiff on the basis  
6 of his disabilities in violation of Title II of the ADA and Section 504 of the  
7 Rehabilitation Act.

8 228. Plaintiff is entitled to compensatory damages under this Count.

9  
10  
11  
12 **COUNT VI**  
13 **42 U.S.C. § 1983 – Fourteenth Amendment Due Process Clause**  
14 **Failure to Intervene/Intercede**  
15 **Against All Individual Police Defendants**

16 229. The allegations above are incorporated by reference in this Count.

17 230. Each of the Defendants named in this Count had an opportunity to intercede  
18 (also sometimes referred to as intervene) at various points throughout the  
19 approximately 20 minutes that Alvarado was restrained on the ground and before he  
20 stopped breathing.

21 231. Specifically, the above-named Defendants failed to intercede when their  
22 colleagues were exerting excessive force in violation of the Fourth Amendment by  
23 holding Alvarado in restraint positions and using restraint devices that were  
24 unnecessary given the known facts at the time.  
25  
26

1       232.       Additionally, the above-named Defendants failed to intercede when,  
2       recognizing that Alvarado was making noises indicating he was in medical distress  
3       and calling out “I can’t breathe”, failed to insert themselves into the situation with the  
4       objective of changing the course of the police interaction.  
5

6       233.       Additionally, the above-named Defendants failed to intercede when,  
7       recognizing that Alvarado lay motionless in the moments after the TFD personnel  
8       concluded their medical check, they failed to check his vital signs again or request  
9       others to do so.  
10

11       234.       Not only did the above officers have a theoretical opportunity to intercede, but  
12       they had a realistic opportunity, with several minutes elapsing while Alvarado’s  
13       constitutional rights were being deprived.  
14

15       235.       Upon information and belief, each of the above-named Defendants understood  
16       in the moment that Alvarado’s behaviors were consistent with someone who was  
17       feeling the effects of methamphetamine or cocaine.  
18

19       236.       Alvarado’s death happened in slow motion and with ample warning (including  
20       Alvarado’s own words). His death was not a sudden, immediate incident that  
21       bystanders would have been powerless to change.  
22

23       237.       In March 2020, this duty to intercede in such circumstances was clearly  
24       established within the Ninth Circuit.  
25

26       238.       Plaintiff is entitled to compensatory and punitive damages under this Count.

**COUNT VII**  
**42 U.S.C. § 1983 – Fourteenth Amendment Due Process Clause**  
**Deliberate Indifference to a Substantial Risk of Serious Harm &**  
**Deliberate Indifference to a Serious Medical Need**  
**Against all Individual Police Defendants and Individual Fire Defendants**

239. Plaintiff re-alleges each allegation contained in the above paragraphs.

240. Alvarado became a pretrial detainee in the care and custody of the Tucson Police Department in the moment that he was seized for purposes of the Fourth Amendment. This occurred, at the very latest, when Defendants Solarino, Yeandle, Ake, and Gamez succeeded in handcuffing Alvarado on the ground.

241. Having become a pretrial detainee in that moment, Alvarado had a constitutional right from that moment onward to be free from conditions of confinement that are violative of the minimum standards under the Fourteenth Amendment Due Process Clause. Put differently, Alvarado had a right to be free from conditions of confinement that amount to punishment, that are deliberately indifferent, and that are lacking in legitimate penological justification.

242. Following the initial seizure, and for approximately the next 20 minutes on the ground of the alley, the Defendants named in this Count were deliberately indifferent in two manners:

- a. Defendants were deliberately indifferent to Alvarado's serious medical needs, namely, his chronic addictive disorder, which was readily apparent in the moments that Defendants interacted with him;

1           b. Defendants were deliberately indifferent to a substantial risk of serious harm to  
2           Alvarado, in light of the well-documented, well-known risk of restraining an  
3           individual exhibiting signs of methamphetamine and/or cocaine intoxication in  
4           the manner described in this Complaint.  
5

6       243.       In the Ninth Circuit, the Fourteenth Amendment extends a more protective  
7           standard to conditions of confinement when a detainee (such as Alvarado) has not  
8           been convicted than when a detainee has been convicted. Defendants were required  
9           under the Fourteenth Amendment to do more than provide Alvarado the minimal  
10          civilized measure of life's necessities.  
11

12       244.       Many of the forms of restraint, including the two TARPs and the two spit  
13           socks, had no reasonable relation to the purpose for which Alvarado was detained. Put  
14           differently, the purpose and effect of these forms of restraint were punitive.  
15

16       245.       The Individual Fire Defendants and Individual Police Defendants were  
17           deliberately indifferent to Alvarado's serious medical needs. In particular, the  
18           Individual Fire Defendants were subjectively aware of the fact that Alvarado was  
19           experiencing a medical emergency and nevertheless recommended to the Individual  
20           Police Defendants that he not be transported to a hospital.  
21

22       246.       Both the Individual Fire Defendants and Individual Police Defendants were  
23           subjectively aware of the fact that Alvarado was suffering from the effects of either  
24           methamphetamine or cocaine. With the momentary exception of Defendant Gamez,  
25  
26



no one among the Defendants treated Alvarado as someone with a serious medical need.

247. It was clearly established prior to 2020 that Defendants' actions amounted to deliberate indifference to a substantial risk of serious harm and deliberate indifference to a serious medical need. Additionally, it was clearly established prior to 2020 that pretrial detainees such as Alvarado were entitled to more considerate treatment than the conditions of confinement applicable to those who have been convicted.

248. The actions of the Defendants named in this Count were intentional, malicious, willful, wanton, and/or callously indifferent for Alvarado's constitutionally protected rights, thereby entitling Plaintiff to an award of punitive damages.

249. Under this Count, Plaintiff is entitled to:

- a. compensatory damages;
- b. damages for loss of life (also sometimes called hedonic damages);
- c. damages for pain and suffering of the decedent prior to death;
- d. punitive damages.

## COUNT VIII

**42 U.S.C. § 1983 – Fourteenth Amendment Due Process Clause  
Substantive Due Process: Liberty Interest in Familial Association  
Against all Individual Police Defendants**

250. Plaintiff re-alleges each allegation contained in the above paragraphs.

251. Plaintiff is the biological mother of Alvarado. Plaintiff brings this Count in her personal capacity, and not in her capacity as the personal representative of the estate.

1       252.       The Ninth Circuit recognizes that a parent has a constitutionally protected  
2       liberty interest under the Fourteenth Amendment in the companionship and society of  
3       her child, sometimes referred to as a protected liberty interest in familial association.  
4  
5       253.       In the Ninth Circuit, this protected liberty interest is recognized even when the  
6       child is an adult at the time of his or her death.  
7  
8       254.       For purposes of this protected liberty interest, the facts described in this  
9       Complaint did not constitute an emergency situation and did not call for law  
10      enforcement to take an emergency action. In the moment that Alvarado was first  
11      seized in the alley and for the 20 minutes following the seizure, Alvarado posed no  
12      risk of harm to civilians, to officers, or to the general public. Put differently, this was  
13      not a situation in which Defendants were forced to make split-second decisions.  
14  
15     255.       Each of the Defendants named in this Count acted and failed to act under  
16      circumstances in which they had an opportunity for reflection. Put differently, each of  
17      the Defendants had an extended opportunity to do better and demonstrated deliberate  
18      indifference in failing to adjust their actions over the course of that time period.  
19  
20     256.       Defendants' behavior shocks the conscience.  
21     257.       Defendants exercised their power in an arbitrary manner.  
22     258.       Defendants' shocking behavior in Tasing Alvarado, hogtying him (twice),  
23      placing a spit sock on him (twice), holding him face down on the ground while he was  
24      obviously in distress and expressing that he couldn't breathe, was the legal, direct, and  
25      proximate cause of Alvarado's death.  
26

259. Plaintiff is entitled to damages for the loss of companionship of her eldest son.

**COUNT IX**  
**A.R.S. §§ 12-611**  
**Gross Negligence Causing Wrongful Death**  
**Against all Individual Police Defendants & Individual Fire Defendants**

260. Plaintiff re-alleges each allegation contained in the above paragraphs.

261. Under Arizona law, when death of a person is caused by negligence, the persons who would have been liable if death had not ensued, shall be liable in an action for damages.

262. For the reasons explained in other counts, both the Individual Police Defendants and Individual Fire Defendants were negligent, and grossly negligent. This negligence was the direct, proximate, and legal cause of Alvarado's death.

263. The Defendants named in this Count are not entitled to state-law qualified immunity because they acted with gross negligence.

264. Plaintiff is entitled to compensatory damages under this Count.

## PRAYER FOR RELIEF

**WHEREFORE**, Plaintiff requests that this Court grant her the following relief:

- A. Compensatory damages, including consequential, general, and special damages, in an amount to be determined at trial;
- B. Loss of Life Damages, also called Hedonic damages, as defined by the federal common law and 42 U.S.C. § 1983;
- C. Pain and Suffering damages as permitted under 42 U.S.C. § 1983;

1 D. Punitive damages pursuant to 42 U.S.C. § 1988;

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3 E. Attorney's fees under 42 U.S.C. § 1988 and 29 U.S.C. § 794a;

4 F. Costs of this action;

5 G. Any other relief that this Court deems appropriate.  
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8 Respectfully submitted this 18<sup>th</sup> day of March, 2022 by:

9  
10 /s Paul Gattone

Paul Gattone

11 Arizona Bar # 012482

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